IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 15.11.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.153 of 2001

M/s Bhari Industrial Promoters
(P) Ltd., rep. by its Managing
Director K.S.M.Musaddique ... Appellant

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to
Government, Housing & Urban
Development Department,
Fort St. George,
Madras-600 009.

2.The Member Secretary,
Chennai Metropolitan
Development Authority,
Madras-600 008. .. Respondents

Writ appeal filed under Clause 15 of the Letters Patent against the order dated 18.12.2000 made in W.P.No.21209 of 2000.Under Article 226 of the constitution of india to issue a Writ of Declaration, declaring the Town and Country Planning Act, 1971 particularaly the provisions relating to Building Regulation and Regularisation and the Application Assessment and Collection of Regulation Fee Chennai Metropolitan Area Rules 1999 made thereunder are ultra vires to Articles 243W, 243ZF, read with Schedule XII of the Constitution of India and Section 113-A of the Town and Country Planning Act 1971 after 26.5.1999 and become defunct and inoperative after the commencement of the Tamil Nadu Municipal Laws Amendmanet Act with effect from 1.8.1996 and the Tamil Nadu Urban Local Bodies Act, 1998 and the Rules made thereunder, dehors the Ordinance and replacement Act suspending the Tamil Nadu Urban Local Bodies Act, 1998 which itself is unconstitutional to Article 213 and colourable exercise of Power inconsistent with the Tamil Nadu General Clauses Act, 1891 in so far as the Petitioner is concerned.

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For Appellant : Mr.V.Raghavachari for
Mr.A.J.Abdul Razak

For 1st respondent : Mr.P.Subramanian,
Government Advocate

For 2nd respondent : Mr.J.Ravindran

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is directed against the order dated 18.12.2000 made in W.P.No.21209 of 2000, in and by which, the learned single Judge, after finding that the petitioner having applied to the Government for certain relief based on the scheme, is not entitled to challenge some provisions under the said scheme alleging that the petitioner was prejudiced only by those provisions, has dismissed the writ petition.

2. Heard the learned counsel for the appellant as well as the respondents.

3. It is not in dispute that in the writ petition, the petitioner has prayed for writ of declaration declaring that the Town and Country Planning Act, 1971 particularly the provisions relating to Building Regulation and Regularisation and the Application Assessment and Collection of Regulation Fee Chennai Metropolitan Area Rules 1999 made thereunder are ultra vires to Articles 243W, 243ZF read with Schedule XII of the Constitution of India and Section 113-A of the Town and Country Planning Act, 1971 after 26.05.1999 and become defunt and inoperative after the commencement of the Tamil Nadu Municipal Laws Amendment Act with effect from 01.08.1996 and the Tamil Nadu Urban Local Bodies Act, 1998 and the Rules made thereunder, dehors the Ordinance and Replacement Act suspending the Tamil Nadu Urban Local Bodies Act, 1998 which itself is unconstitutional to Article 213 and colourable exercise of Power inconsistent with the Tamil Nadu General Clauses Act, 1891 in so far as the petitioner is concerned.

4. Considering the relief prayed for and of the fact that the petitioner/appellant themselves applied for the benefit of the scheme, we are in entire agreement with the conclusion arrived at by the learned single Judge. Further the learned counsel appearing for the appellant argued that though the appellant has filed an appeal to the State Government and the same was rejected, this Court in the interest of the parties can go into the merits of the same and pass appropriate orders. We are unable to accept the said contention.

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If the petitioner/appellant is aggrieved by the order of the Government, it is for them to challenge the same in the manner known to law, if the same is permissible under law at this juncture.

5. With the above observation, the writ appeal is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

raa

To

1.The Secretary to Government,
State of Tamil Nadu,
Housing & Urban
Development Department,
Fort St. George,
Madras-600 009.

2.The Member Secretary,
Chennai Metropolitan
Development Authority,
Madras-600 008.

- +1C.C TO MR.A.J.ABDUL RAZAK, ADVOCATE. SR.NO.55464.
- +1C.C TO THE GOVERNMENT PLEADER.SR.NO.55095.

AKM(CO)
NG[27/11/2006]

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